

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 2012 is amended by changing
5 Sections 36-1, 36-1.5, 36-2, and 36-5 as follows:

6 (720 ILCS 5/36-1) (from Ch. 38, par. 36-1)

7 Sec. 36-1. Seizure.

8 (a) Any vessel, vehicle, or aircraft may be seized and
9 impounded by the law enforcement agency if the vessel, vehicle,
10 or aircraft is used with the knowledge and consent of the owner
11 in the commission of, or in the attempt to commit as defined in
12 Section 8-4 of this Code, an offense prohibited by:

13 (1) ~~(a)~~ Section 9-1 (first degree murder), 9-3
14 (involuntary manslaughter and reckless homicide), 10-2
15 (aggravated kidnaping), 11-1.20 (criminal sexual assault),
16 11-1.30 (aggravated criminal sexual assault), 11-1.40
17 (predatory criminal sexual assault of a child), subsection
18 (a) of Section 11-1.50 (criminal sexual abuse), subsection
19 (a), (c), or (d) of Section 11-1.60 (aggravated criminal
20 sexual abuse), Section 11-6 (indecent solicitation of a
21 child), 11-14.4 (promoting juvenile prostitution except
22 for keeping a place of juvenile prostitution), ~~11-15.1,~~
23 ~~11-19.1, 11-19.2,~~ 11-20.1 (child pornography), paragraph

1 (a) (1), (a) (2), (a) (4), (b) (1), (b) (2), (e) (1), (e) (2),
2 (e) (3), (e) (4), (e) (5), (e) (6), or (e) (7) of Section
3 12-3.05 (aggravated battery), ~~11-20.1B, 11-20.3, 12-4.1,~~
4 ~~12-4.2, 12-4.2-5, 12-4.3, 12-4.6,~~ 12-7.3 (stalking),
5 12-7.4 (aggravated stalking), ~~12-13, 12-14,~~ 16-1 (theft if
6 the theft is of precious metal or of scrap metal),
7 subdivision (f) (2) or (f) (3) of Section 16-25 (retail
8 theft), Section 18-2 (armed robbery), 19-1 (burglary),
9 19-2 (possession of burglary tools), 19-3 (residential
10 burglary), 20-1 (arson; residential arson; place of
11 worship arson), 20-2 (possession of explosives or
12 explosive or incendiary devices), subdivision (a) (6) or
13 (a) (7) of Section 24-1 (unlawful use of weapons), Section,
14 24-1.2 (aggravated discharge of a firearm), 24-1.2-5
15 (aggravated discharge of a machine gun or a firearm
16 equipped with a device designed or used for silencing the
17 report of a firearm), 24-1.5 (reckless discharge of a
18 firearm), 28-1 (gambling), or 29D-15.2 (possession of a
19 deadly substance) of this Code; ~~subdivision (a) (1),~~
20 ~~(a) (2), (a) (4), (b) (1), (e) (1), (e) (2), (e) (3), (e) (4),~~
21 ~~(e) (5), (e) (6), or (e) (7) of Section 12-3.05, paragraph (a)~~
22 ~~of Section 12-4 of this Code, paragraph (a) of Section~~
23 ~~11-1.50, paragraph (a) of Section 12-15, paragraph (a),~~
24 ~~(e), or (d) of Section 11-1.60, or paragraphs (a), (e) or~~
25 ~~(d) of Section 12-16 of this Code, or paragraph (a) (6) or~~
26 ~~(a) (7) of Section 24-1 of this Code;~~

1 (2) ~~(b)~~ Section 21, 22, 23, 24 or 26 of the Cigarette
2 Tax Act if the vessel, vehicle, or aircraft contains more
3 than 10 cartons of such cigarettes;

4 (3) ~~(c)~~ Section 28, 29, or 30 of the Cigarette Use Tax
5 Act if the vessel, vehicle, or aircraft contains more than
6 10 cartons of such cigarettes;

7 (4) ~~(d)~~ Section 44 of the Environmental Protection Act;

8 (5) ~~(e)~~ Section 11-204.1 of the Illinois Vehicle Code
9 (aggravated fleeing or attempting to elude a peace
10 officer);

11 (6) Section 11-501 of the Illinois Vehicle Code
12 (driving while under the influence of alcohol or other drug
13 or drugs, intoxicating compound or compounds or any
14 combination thereof) or a similar provision of a local
15 ordinance, and:

16 ~~(f) (1) driving under the influence of alcohol or other drug or~~
17 ~~drugs, intoxicating compound or compounds or any~~
18 ~~combination thereof under Section 11-501 of the~~
19 ~~Illinois Vehicle Code during a period in which~~

20 (A) during a period in which his or her driving
21 privileges are revoked or suspended if ~~where~~ the
22 revocation or suspension was for:

23 (i) Section 11-501 (driving under the
24 influence of alcohol or other drug or drugs,
25 intoxicating compound or compounds or any
26 combination thereof),

1 (ii) Section 11-501.1 (statutory summary
2 suspension or revocation),

3 (iii) paragraph (b) of Section 11-401 (motor
4 vehicle accidents involving death or personal
5 injuries), or ~~for~~

6 (iv) reckless homicide as defined in Section
7 9-3 of this ~~the Criminal Code of 1961 or the~~
8 ~~Criminal Code of 2012~~;

9 (B) ~~(2) driving while under the influence of~~
10 ~~alcohol, other drug or drugs, intoxicating compound or~~
11 ~~compounds or any combination thereof and has been~~
12 previously convicted of reckless homicide or a similar
13 provision of a law of another state relating to
14 reckless homicide in which the person was determined to
15 have been under the influence of alcohol, other drug or
16 drugs, or intoxicating compound or compounds as an
17 element of the offense or the person has previously
18 been convicted of committing a violation of driving
19 under the influence of alcohol or other drug or drugs,
20 intoxicating compound or compounds or any combination
21 thereof and was involved in a motor vehicle accident
22 that resulted in death, great bodily harm, or permanent
23 disability or disfigurement to another, when the
24 violation was a proximate cause of the death or
25 injuries;

26 (C) ~~(3)~~ the person committed a violation of driving

1 under the influence of alcohol or other drug or drugs,
2 intoxicating compound or compounds or any combination
3 thereof under Section 11-501 of the Illinois Vehicle
4 Code or a similar provision for the third or subsequent
5 time;

6 (D) ~~(4) the person committed the violation while he~~
7 or she did not possess a valid driver's license or
8 permit or a valid restricted driving permit or a valid
9 judicial driving permit or a valid monitoring device
10 driving permit; or

11 (E) ~~(5) the person committed the violation while he~~
12 or she knew or should have known that the vehicle he or
13 she was driving was not covered by a liability
14 insurance policy;

15 (7) ~~(g)~~ an offense described in subsection (g) of
16 Section 6-303 of the Illinois Vehicle Code; or

17 (8) ~~(h)~~ an offense described in subsection (e) of
18 Section 6-101 of the Illinois Vehicle Code; ~~may be seized~~
19 ~~and delivered forthwith to the sheriff of the county of~~
20 ~~seizure.~~

21 ~~Within 15 days after such delivery the sheriff shall give~~
22 ~~notice of seizure to each person according to the following~~
23 ~~method: Upon each such person whose right, title or interest is~~
24 ~~of record in the office of the Secretary of State, the~~
25 ~~Secretary of Transportation, the Administrator of the Federal~~
26 ~~Aviation Agency, or any other Department of this State, or any~~

1 ~~other state of the United States if such vessel, vehicle or~~
2 ~~aircraft is required to be so registered, as the case may be,~~
3 ~~by mailing a copy of the notice by certified mail to the~~
4 ~~address as given upon the records of the Secretary of State,~~
5 ~~the Department of Aeronautics, Department of Public Works and~~
6 ~~Buildings or any other Department of this State or the United~~
7 ~~States if such vessel, vehicle or aircraft is required to be so~~
8 ~~registered. Within that 15 day period the sheriff shall also~~
9 ~~notify the State's Attorney of the county of seizure about the~~
10 ~~seizure.~~

11 (b) In addition, any mobile or portable equipment used in
12 the commission of an act which is in violation of Section 7g of
13 the Metropolitan Water Reclamation District Act shall be
14 subject to seizure and forfeiture under the same procedures
15 provided in this Article for the seizure and forfeiture of
16 vessels, vehicles, and aircraft, and any such equipment shall
17 be deemed a vessel, vehicle, or aircraft for purposes of this
18 Article.

19 (c) In addition, ~~when~~ ~~When~~ a person discharges a firearm at
20 another individual from a vehicle with the knowledge and
21 consent of the owner of the vehicle and with the intent to
22 cause death or great bodily harm to that individual and as a
23 result causes death or great bodily harm to that individual,
24 the vehicle shall be subject to seizure and forfeiture under
25 the same procedures provided in this Article for the seizure
26 and forfeiture of vehicles used in violations of clauses (1),

1 (2), (3), or (4) of subsection (a) ~~(a), (b), (c), or (d)~~ of
2 this Section.

3 (d) If the spouse of the owner of a vehicle seized for an
4 offense described in subsection (g) of Section 6-303 of the
5 Illinois Vehicle Code, a violation of subdivision (d)(1)(A),
6 (d)(1)(D), (d)(1)(G), (d)(1)(H), or (d)(1)(I) of Section
7 11-501 of the Illinois Vehicle Code, or Section 9-3 of this
8 Code makes a showing that the seized vehicle is the only source
9 of transportation and it is determined that the financial
10 hardship to the family as a result of the seizure outweighs the
11 benefit to the State from the seizure, the vehicle may be
12 forfeited to the spouse or family member and the title to the
13 vehicle shall be transferred to the spouse or family member who
14 is properly licensed and who requires the use of the vehicle
15 for employment or family transportation purposes. A written
16 declaration of forfeiture of a vehicle under this Section shall
17 be sufficient cause for the title to be transferred to the
18 spouse or family member. The provisions of this paragraph shall
19 apply only to one forfeiture per vehicle. If the vehicle is the
20 subject of a subsequent forfeiture proceeding by virtue of a
21 subsequent conviction of either spouse or the family member,
22 the spouse or family member to whom the vehicle was forfeited
23 under the first forfeiture proceeding may not utilize the
24 provisions of this paragraph in another forfeiture proceeding.
25 If the owner of the vehicle seized owns more than one vehicle,
26 the procedure set out in this paragraph may be used for only

1 one vehicle.

2 (e) In addition, property ~~Property~~ declared contraband
3 under Section 40 of the Illinois Streetgang Terrorism Omnibus
4 Prevention Act may be seized and forfeited under this Article.

5 (Source: P.A. 96-313, eff. 1-1-10; 96-710, eff. 1-1-10;
6 96-1000, eff. 7-2-10; 96-1267, eff. 7-26-10; 96-1289, eff.
7 1-1-11; 96-1551, Article 1, Section 960, eff. 7-1-11; 96-1551,
8 Article 2, Section 1035, eff. 7-1-11; 97-333, eff. 8-12-11;
9 97-1109, eff. 1-1-13; 97-1150, eff. 1-25-13.)

10 (720 ILCS 5/36-1.5)

11 Sec. 36-1.5. Preliminary Review.

12 (a) Within 14 days of the seizure, the State's Attorney in
13 the county in which the seizure occurred ~~State~~ shall seek a
14 preliminary determination from the circuit court as to whether
15 there is probable cause that the property may be subject to
16 forfeiture.

17 (b) The rules of evidence shall not apply to any proceeding
18 conducted under this Section.

19 (c) The court may conduct the review under subsection (a)
20 simultaneously with a proceeding pursuant to Section 109-1 of
21 the Code of Criminal Procedure of 1963 for a related criminal
22 offense if a prosecution is commenced by information or
23 complaint.

24 (d) The court may accept a finding of probable cause at a
25 preliminary hearing following the filing of an information or

1 complaint charging a related criminal offense or following the
2 return of indictment by a grand jury charging the related
3 offense as sufficient evidence of probable cause as required
4 under subsection (a).

5 (e) Upon making a finding of probable cause as required
6 under this Section, the circuit court shall order the property
7 subject to the provisions of the applicable forfeiture Act held
8 until the conclusion of any forfeiture proceeding.

9 For seizures of conveyances, within 7 days of a finding of
10 probable cause under subsection (a), the registered owner or
11 other claimant may file a motion in writing supported by sworn
12 affidavits claiming that denial of the use of the conveyance
13 during the pendency of the forfeiture proceedings creates a
14 substantial hardship. The court shall consider the following
15 factors in determining whether a substantial hardship has been
16 proven:

17 (1) the nature of the claimed hardship;

18 (2) the availability of public transportation or other
19 available means of transportation; and

20 (3) any available alternatives to alleviate the
21 hardship other than the return of the seized conveyance.

22 If the court determines that a substantial hardship has
23 been proven, the court shall then balance the nature of the
24 hardship against the State's interest in safeguarding the
25 conveyance. If the court determines that the hardship outweighs
26 the State's interest in safeguarding the conveyance, the court

1 may temporarily release the conveyance to the registered owner
2 or the registered owner's authorized designee, or both, until
3 the conclusion of the forfeiture proceedings or for such
4 shorter period as ordered by the court provided that the person
5 to whom the conveyance is released provides proof of insurance
6 and a valid driver's license and all State and local
7 registrations for operation of the conveyance are current. The
8 court shall place conditions on the conveyance limiting its use
9 to the stated hardship and restricting the conveyance's use to
10 only those individuals authorized to use the conveyance by the
11 registered owner. The court shall revoke the order releasing
12 the conveyance and order that the conveyance be resealed by law
13 enforcement if the conditions of release are violated or if the
14 conveyance is used in the commission of any offense identified
15 in subsection (a) of Section 6-205 of the Illinois Vehicle
16 Code.

17 If the court orders the release of the conveyance during
18 the pendency of the forfeiture proceedings, the registered
19 owner or his or her authorized designee shall post a cash
20 security with the Clerk of the Court as ordered by the court.
21 The court shall consider the following factors in determining
22 the amount of the cash security:

23 (A) the full market value of the conveyance;

24 (B) the nature of the hardship;

25 (C) the extent and length of the usage of the
26 conveyance; and

1 (D) such other conditions as the court deems necessary
2 to safeguard the conveyance.

3 If the conveyance is released, the court shall order that
4 the registered owner or his or her designee safeguard the
5 conveyance, not remove the conveyance from the jurisdiction,
6 not conceal, destroy, or otherwise dispose of the conveyance,
7 not encumber the conveyance, and not diminish the value of the
8 conveyance in any way. The court shall also make a
9 determination of the full market value of the conveyance prior
10 to it being released based on a source or sources defined in 50
11 Ill. Adm. Code 919.80(c)(2)(A) or 919.80(c)(2)(B).

12 If the conveyance subject to forfeiture is released under
13 this Section and is subsequently forfeited, the person to whom
14 the conveyance was released shall return the conveyance to the
15 law enforcement agency that seized the conveyance within 7 days
16 from the date of the declaration of forfeiture or order of
17 forfeiture. If the conveyance is not returned within 7 days,
18 the cash security shall be forfeited in the same manner as the
19 conveyance subject to forfeiture. If the cash security was less
20 than the full market value, a judgment shall be entered against
21 the parties to whom the conveyance was released and the
22 registered owner, jointly and severally, for the difference
23 between the full market value and the amount of the cash
24 security. If the conveyance is returned in a condition other
25 than the condition in which it was released, the cash security
26 shall be returned to the surety who posted the security minus

1 the amount of the diminished value, and that amount shall be
2 forfeited in the same manner as the conveyance subject to
3 forfeiture. Additionally, the court may enter an order allowing
4 any law enforcement agency in the State of Illinois to seize
5 the conveyance wherever it may be found in the State to satisfy
6 the judgment if the cash security was less than the full market
7 value of the conveyance.

8 (Source: P.A. 97-544, eff. 1-1-12; 97-680, eff. 3-16-12.)

9 (720 ILCS 5/36-2) (from Ch. 38, par. 36-2)

10 Sec. 36-2. Action for forfeiture.

11 (a) The State's Attorney in the county in which such
12 seizure occurs if he or she finds that the ~~such~~ forfeiture was
13 incurred without willful negligence or without any intention on
14 the part of the owner of the vessel, vehicle or aircraft or any
15 person whose right, title or interest is of record as described
16 in Section 36-1, to violate the law, or finds the existence of
17 such mitigating circumstances as to justify remission of the
18 forfeiture, may cause the law enforcement agency ~~sheriff~~ to
19 remit the same upon such terms and conditions as the State's
20 Attorney deems reasonable and just. The State's Attorney shall
21 exercise his or her discretion under the foregoing provision of
22 this Section 36-2(a) prior to or promptly after the preliminary
23 review under Section 36-1.5 ~~notice is given in accordance with~~
24 ~~Section 36-1.~~

25 (b) If the State's Attorney does not cause the forfeiture

1 to be remitted he or she shall forthwith bring an action for
2 forfeiture in the Circuit Court within whose jurisdiction the
3 seizure and confiscation has taken place. The State's Attorney
4 shall give notice of seizure and the forfeiture proceeding to
5 each person according to the following method: Upon each person
6 whose right, title, or interest is of record in the office of
7 the Secretary of State, the Secretary of Transportation, the
8 Administrator of the Federal Aviation Agency, or any other
9 Department of this State, or any other state of the United
10 States if the vessel, vehicle, or aircraft is required to be so
11 registered, as the case may be, by delivering the notice and
12 complaint in open court or by certified mail to the address as
13 given upon the records of the Secretary of State, the Division
14 of Aeronautics of the Department of Transportation, the Capital
15 Development Board, or any other Department of this State or the
16 United States if the vessel, vehicle, or aircraft is required
17 to be so registered ~~the forfeiture proceeding by mailing a copy~~
18 ~~of the Complaint in the forfeiture proceeding to the persons,~~
19 ~~and upon the manner, set forth in Section 36-1.~~

20 (c) The owner of the seized vessel, vehicle, or aircraft or
21 any person whose right, title, or interest is of record as
22 described in Section 36-1, may within 20 days after delivery in
23 open court or the mailing of such notice file a verified answer
24 to the Complaint and may appear at the hearing on the action
25 for forfeiture.

26 (d) The State shall show at such hearing by a preponderance

1 of the evidence, that such vessel, vehicle, or aircraft was
2 used in the commission of an offense described in Section 36-1.

3 (e) The owner of such vessel, vehicle, or aircraft or any
4 person whose right, title, or interest is of record as
5 described in Section 36-1, may show by a preponderance of the
6 evidence that he did not know, and did not have reason to know,
7 that the vessel, vehicle, or aircraft was to be used in the
8 commission of such an offense or that any of the exceptions set
9 forth in Section 36-3 are applicable.

10 (f) Unless the State shall make such showing, the Court
11 shall order such vessel, vehicle, or aircraft released to the
12 owner. Where the State has made such showing, the Court may
13 order the vessel, vehicle, or aircraft destroyed ~~or~~ may order
14 it forfeited ~~delivered~~ to any local, municipal or county law
15 enforcement agency, or the Department of State Police or the
16 Department of Revenue of the State of Illinois; ~~or may order it~~
17 ~~sold at public auction.~~

18 (g) ~~(b)~~ A copy of the order shall be filed with the law
19 enforcement agency, ~~sheriff of the county in which the seizure~~
20 ~~occurs~~ and with each Federal or State office or agency with
21 which such vessel, vehicle, or aircraft is required to be
22 registered. Such order, when filed, constitutes authority for
23 the issuance of clear title to such vessel, vehicle, or
24 aircraft, ~~or boat~~ to the department or agency to whom it is
25 delivered or any purchaser thereof. The law enforcement agency
26 ~~sheriff~~ shall comply promptly with instructions to remit

1 received from the State's Attorney or Attorney General in
2 accordance with Sections 36-2(a) or 36-3.

3 (h) ~~(e)~~ The proceeds of any sale at public auction pursuant
4 to Section 36-2 of this Act, after payment of all liens and
5 deduction of the reasonable charges and expenses incurred by
6 the State's Attorney's Office ~~sheriff in storing and selling~~
7 ~~such vehicle,~~ shall be paid to ~~into~~ the law enforcement agency
8 having seized the vehicle for forfeiture ~~general fund of the~~
9 ~~county of seizure.~~

10 (Source: P.A. 84-25.)

11 (720 ILCS 5/36-5)

12 Sec. 36-5. The law enforcement agency, county or sheriff
13 not liable for stored forfeited vehicle. A law enforcement
14 agency, county, sheriff, law enforcement officer or employee of
15 the law enforcement agency or ~~deputy sheriff, or employee of~~
16 ~~the~~ county sheriff shall not be civilly or criminally liable
17 for any damage to a forfeited vehicle stored with a commercial
18 vehicle safety relocater.

19 (Source: P.A. 96-1274, eff. 7-26-10.)

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.